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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/382,622	08/25/1999	H. CRAIG DEES	PHO-107-DIV	5477

7590 04/22/2005

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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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20050406

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Attached, hereto, is Office communication regarding a non-responsive amendment filed with RCE.

1. Receipt is acknowledged of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e) and a submission, filed on 11/23/04. The submission, however, is not fully responsive to the prior Office action because new claims 68-73 encompass a new invention. Since the submission appears to be a *bona fide* attempt to provide a complete reply to the prior Office action, applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period for reply supersedes the time period set in the prior Office action. This time period may be extended pursuant to 37 CFR 1.136(a).

The amendment filed 11/23/04 after a decision by the Board of Patent Appeals and Interferences is not entered because prosecution is closed and the proposed new claims raise new issues which require further consideration or search (37 CFR 1.116(c)). See also 37 CFR 1.198.

Applicants cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right (i.e., applicant cannot switch inventions). See 37 CFR 1.145. Any newly submitted claims that are directed to an invention that is independent and distinct from the invention previously claimed will be withdrawn from consideration and not entered. See subsection VI below. An RCE is not the filing of a new application. Thus, the Office will not convert an RCE to a new application such as an

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application filed under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d).

Newly submitted claims 68-73 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 68-73 recite a "combination" of a composition for treatment of cancer or tumors, and wherein the halogenated xanthene is required not to be contained in immuno-liposome.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 2-4, 8, 9, 14, 15, 20, 52, 55-57, 60, 61, 64-73 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Applicant is advised to bring back the claims that were previously under prosecution.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gailene R. Gabel whose telephone number is (571) 272-0820. The examiner can normally be reached on Monday, Tuesday, and Thursday, 7:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gailene R. Gabel
Patent Examiner
Art Unit 1641
April 8, 2005

SG

Christopher L. Chin
CHRISTOPHER L. CHIN
PRIMARY EXAMINER
GROUP ~~1800~~ 1641